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# HOUSE BILL No. 1332

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5-5-39; IC 6-3; IC 6-3.1-4-6.

**Synopsis:** Tax incentives. Exempts purchases of research and development equipment from sales tax. Provides that, for purposes of the Indiana adjusted gross income tax, business income is apportioned based on the sales factor. Eliminates the property factor and payroll factor that are currently also used in apportioning income. Makes the research expense income tax credit permanent.

**Effective:** July 1, 2004; January 1, 2005.

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January 15, 2004, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1332

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2004]: **Sec. 39. (a) As used in this section, "product" includes:**

4 (1) A **pilot model, a process, a formula, an invention, a**  
5 **technique, a patent, or a similar property.**

6 (2) **Property to be used in a taxpayer's trade or business.**

7 (3) **Property to be held for sale, lease, or license, regardless of**  
8 **whether the property is ultimately placed in service, sold,**  
9 **leased, or licensed.**

10 (b) **As used in this section, "research and development" means**  
11 **laboratory or experimental activity to develop or improve a**  
12 **product or to discover information that would eliminate**  
13 **uncertainty concerning the development or improvement of a**  
14 **product.**

15 (c) **The term "research and development" does not include any**  
16 **of the following:**

17 (1) **The ordinary testing or inspection of materials or products**



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for quality control. The quality control testing to which this subdivision applies includes testing or inspection to determine whether particular units of materials or products conform to specified parameters. Quality control testing does not include testing to determine if the design of a product is appropriate.

(2) Efficiency surveys.

(3) Management studies.

(4) Consumer surveys.

(5) Advertising or promotions.

(6) The acquisition of another's patent, model, production, process, or other product.

(7) Research in connection with literary, historical, or similar projects.

(8) Activities to ascertain the existence, location, extent, or quality of any deposit of oil, gas, ore, or other mineral.

(9) Assembly, construction, or installation of property that is placed in service or held for sale, lease, or license.

(d) As used in this section, "uncertainty" means the unavailability to the taxpayer of information necessary to establish the capability or method for developing or improving the product or the appropriate design of the product.

(e) Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct use in research and development.

SECTION 2. IC 6-3-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 24. The term "sales" means all gross receipts of the taxpayer not allocated under ~~IC 6-3-2-2(g)~~ **IC 6-3-2-2(e)** through ~~IC 6-3-2-2(k)~~, **IC 6-3-2-2(i)**, other than compensation (as defined in section 23 of this chapter).

SECTION 3. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss), SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks,

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trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

In the case of nonbusiness income described in subsection ~~(g)~~; **(e)**, only so much of such income as is allocated to this state under the provisions of subsections ~~(h)~~ **(f)** through ~~(k)~~ **(i)** shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection ~~(r)~~ **(p)** is considered derived from sources within Indiana.

(b) Except as provided in subsection ~~(t)~~; **(j)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction; the numerator of which is the property factor plus the payroll factor plus the sales factor. and the denominator of which is three ~~(3)~~. However; after a period of two (2) consecutive quarters of income growth and one ~~(1)~~ additional quarter (regardless of any income growth); the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period; the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent ~~(133%)~~ of the sales factor; and the denominator of the fraction is three and thirty-three hundredths ~~(3.33)~~.

(2) For all taxable years that begin within the second calendar year following the period; the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent ~~(167%)~~ of the sales factor; and the denominator of the fraction is three and sixty-seven hundredths ~~(3.67)~~.

(3) For all taxable years beginning on or after January 1 of the

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third calendar year following the period; the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor; and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more; as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula  $(1+N)^4-1$ , where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction; the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction; the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation; and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

(1) the individual's service is performed entirely within the state;

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(2) the individual's service is performed both within and without this state; but the service performed without this state is incidental to the individual's service within this state; or

(3) some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed; but the individual is a resident of this state.

(c) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(d) Sales, other than receipts from intangible property covered by subsection (c) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(e) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the

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1 extent that they constitute nonbusiness income, shall be allocated as  
 2 provided in subsections ~~(h)~~ (f) through ~~(k)~~ (i).

3 ~~(h)(1)~~ (f)(1) Net rents and royalties from real property located in this  
 4 state are allocable to this state.

5 (2) Net rents and royalties from tangible personal property are  
 6 allocated to this state:

7 (i) if and to the extent that the property is utilized in this state; or

8 (ii) in their entirety if the taxpayer's commercial domicile is in this  
 9 state and the taxpayer is not organized under the laws of or  
 10 taxable in the state in which the property is utilized.

11 (3) The extent of utilization of tangible personal property in a state  
 12 is determined by multiplying the rents and royalties by a fraction, the  
 13 numerator of which is the number of days of physical location of the  
 14 property in the state during the rental or royalty period in the taxable  
 15 year, and the denominator of which is the number of days of physical  
 16 location of the property everywhere during all rental or royalty periods  
 17 in the taxable year. If the physical location of the property during the  
 18 rental or royalty period is unknown or unascertainable by the taxpayer,  
 19 tangible personal property is utilized in the state in which the property  
 20 was located at the time the rental or royalty payer obtained possession.

21 ~~(i)(1)~~ (g)(1) Capital gains and losses from sales of real property  
 22 located in this state are allocable to this state.

23 (2) Capital gains and losses from sales of tangible personal property  
 24 are allocable to this state if:

25 (i) the property had a situs in this state at the time of the sale; or

26 (ii) the taxpayer's commercial domicile is in this state and the  
 27 taxpayer is not taxable in the state in which the property had a  
 28 situs.

29 (3) Capital gains and losses from sales of intangible personal  
 30 property are allocable to this state if the taxpayer's commercial  
 31 domicile is in this state.

32 ~~(j)~~ (h) Interest and dividends are allocable to this state if the  
 33 taxpayer's commercial domicile is in this state.

34 ~~(k)(1)~~ (i)(1) Patent and copyright royalties are allocable to this state:

35 (i) if and to the extent that the patent or copyright is utilized by  
 36 the taxpayer in this state; or

37 (ii) if and to the extent that the patent or copyright is utilized  
 38 by the taxpayer in a state in which the taxpayer is not taxable  
 39 and the taxpayer's commercial domicile is in this state.

40 (2) A patent is utilized in a state to the extent that it is employed  
 41 in production, fabrication, manufacturing, or other processing in  
 42 the state or to the extent that a patented product is produced in the

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state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(~~h~~) (j) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(~~2~~) the exclusion of any one (~~1~~) or more of the factors;

(~~3~~) (2) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(~~4~~) (3) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(~~m~~) (k) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(~~n~~) (l) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(~~o~~) (m) Notwithstanding subsections (~~h~~) (j) and (~~m~~) (k), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

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(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

~~(p)~~ **(n)** Notwithstanding subsections ~~(t)~~ **(j)** and ~~(m)~~; **(k)**, the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection ~~(o)(1)~~ **(m)(1)** or ~~(o)(2)~~ **(m)(2)** be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections ~~(t)~~ **(j)** and ~~(m)~~; **(k)**.

~~(q)~~ **(o)** Notwithstanding subsections ~~(o)~~ **(m)** and ~~(p)~~; **(n)**, one (1) or more taxpayers may petition the department under subsection ~~(t)~~ **(j)** for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

~~(r)~~ **(p)** This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance.

SECTION 4. IC 6-3-2-2.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]: Sec. 2.4. (a) For purposes of section ~~2(o)~~ **2(m)** of this chapter, a corporation is a foreign operating corporation for a particular taxable year if it has eighty percent (80%) or more of its total business activity occurring outside the United States during the taxable year.

(b) For purposes of determining the amount of a corporation's business activity that occurs within the United States, the department shall determine the sum of that corporation's United States property factor and its United States payroll factor and divide that sum by two

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(2). If the quotient exceeds two-tenths (0.2), then less than eighty percent (80%) of the corporation's business shall be considered to have occurred outside the United States. If the quotient equals or is less than two-tenths (0.2), then eighty percent (80%) or more of the corporation's business shall be considered to have occurred outside the United States. If a corporation's United States property factor or its United States payroll factor has a denominator of zero (0), then the sum of the two (2) factors shall be divided by one (1) and not by two (2).

(c) The United States property factor of a corporation is a fraction. The numerator of the fraction is the average value of the corporation's real and tangible personal property owned or rented and used in the United States during the taxable year, and the denominator of the fraction is the average value of all the corporation's real and tangible personal property owned or rented and used anywhere in the world during the taxable year. Property owned by the corporation shall be valued at its original cost. Property rented by the corporation shall be valued at eight (8) times the net annual rental rate. The corporation's net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the corporation's property.

(d) The United States payroll factor of a corporation is a fraction. The numerator of the fraction is the total compensation to individuals paid in the United States during the taxable year by the corporation, and the denominator of the fraction is the total compensation to individuals paid anywhere in the world during the taxable year by the corporation. Compensation to an individual is paid in the United States if:

- (1) the individual's service is performed entirely within the United States;
- (2) the individual's service is performed both within and outside the United States, but the service performed outside the United States is incidental to the individual's service within the United States; or
- (3) the individual is a resident of the United States, some of the service is performed in the United States, and:
  - (A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the United States; or

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(B) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is not in a jurisdiction that is outside the United States and that is where some part of the service is performed.

SECTION 5. IC 6-3.1-4-6, AS AMENDED BY P.L.224-2003, SECTION 191, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. ~~Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for Indiana qualified research expense incurred after December 31, 2013.~~ Notwithstanding Section 41 of the Internal Revenue Code, the termination date in Section 41(h) of the Internal Revenue Code does not apply to a taxpayer who is eligible for the credit under this chapter for the taxable year in which the Indiana qualified research expense is incurred.

SECTION 6. [EFFECTIVE JANUARY 1, 2005] IC 6-3-1-24, IC 6-3-2-2, and IC 6-3-2-2.4, all as amended by this act, apply only to taxable years beginning after December 31, 2004.

SECTION 7. [EFFECTIVE JULY 1, 2004] For purposes of IC 6-2.5-5-39, as added by this act, all transactions shall be considered as having occurred after June 30, 2004, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2004, to the extent that the agreement of the parties to the transaction was entered into before July 1, 2004, and payment for the property or services furnished in the transaction is made before July 1, 2004, notwithstanding the delivery of the property or services after June 30, 2004.

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